Washington, Audrey

From: Godsey, Cindi
Sent: Friday, July 19, 2013 9:30 AM
To: Zobrist, Marcus
Subject: RE: ELGs and permits

Thanks Marcus. It is nice to know that I haven't been laboring under false interpretations for the last 20 years. I have forwarded your response to my ORC contact to see if we can draft a response that deals with the guidance and court case issues because our 2007 response did not address those issues.

Have fun in Shepardstown. Wish I was going there again although I hear it is beastly hot. It is supposed to be in the low to mid-70s here all next week.

From: Zobrist, Marcus
Sent: Friday, July 19, 2013 7:48 AM
To: Godsey, Cindi; Saxena, Juhi
Cc: Hair, David
Subject: RE: ELGs and permits

Cindi,

Your understanding and the statements made by EPA in 2007 are correct. Where there is an ELG for an applicable industrial activity it "occupies the field" and there is no room for BPJ. This is true where an ELG "considered" a parameter, but ultimately did not regulate it. Basically, the is no opportunity to second guess the ELG.

I've enclosed a link to the 2010 guidance on BPJ permitting for FGD discharges from Steam Electric facilities because it a has short discussion on pg 1-2 that I find helpful. Here the opposite occurred, as the ELG considered certain industrial activities, but not FGD discharges. Thus, the ELG did not "occupy the field" and TBELs based on BPJ are required. See http://www.epa.gov/npdes/pubs/steamelectricbpjguidance.pdf

Hope this helps.

From: Godsey, Cindi
Sent: Thursday, July 18, 2013 2:44 PM
To: Zobrist, Marcus; Saxena, Juhi
Cc: Hair, David
Subject: ELGs and permits

Marcus,

Additional information to the v-mail that I left for you:

The comment I received:

Even if the Coastal and Offshore ELGs exempt Cook Inlet, EPA Still Has the Ability to Require Zero Discharge. EPA should require operators to demonstrate that zero discharge is not technically feasible for exploration facilities. In *American Frozen Food Institute v. Train*, the DC Circuit stated that, under Section 402 of the CWA, EPA is "clearly . . . able to employ any limitation it finds appropriate for a specific plant which falls between a 'range' of zero pollutant discharge and the nationally set effluent limitations."[case citation below] EPA similarly recognized in the *Technical Support Document for the 2004 Effluent Guidelines Program Plan* that the

permit writer has “the ability . . . to require an operator to demonstrate that zero discharge is not technically feasible for a specific project.”[full quote below]

In the previous response to comments on this general permit (last reissued in 2007), in response to a comment that EPA should require zero discharge even though the ELGs specifically allowed the discharges, we stated:

The Offshore and Coastal Oil and Gas ELGs establish technology-based standards and conditions for discharges of drilling fluids, drill cuttings, and produced water. The ELGs have specific requirements for Cook Inlet operators. EPA does not have the flexibility to set more stringent technology-based standards and conditions and cannot prohibit these discharges within Cook Inlet

The response that we provided in 2007 seems to be the method outlined in the Permit Writers Manual (there is no step to determine an applicable level between zero and the ELG – see the court case quoting the Third Circuit below) and it has been my understanding of the permitting program all along but the info in the comment using the info below seems to show a disconnect in how the ELG folks think that we apply the ELGs in permits.

Help!

Cindi

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Technical Support Document for the 2004 Effluent Guidelines Program Plan (on the Coastal O&G ELG – 40 CFR 435 Subpart D):

Given the 16-year lag between NSPS projects, the ability of the permit writer to require an operator to demonstrate that zero discharge is not technically feasible for a specific project, and the relatively low toxicity of the discharges, EPA decided not to revise effluent guidelines for drill cuttings discharges in this subcategory at this time.

AMERICAN FROZEN FOOD INSTITUTE, Petitioner, v. Russell E. **TRAIN**, Administrator, and Environmental Protection Agency, Respondents and POTATO PROCESSORS OF IDAHO, Petitioner, v. Russell E. TRAIN, Administrator, and Environmental Protection Agency, Respondents. (539 F.2d 107 8 ERC 1993, 176 U.S.App.D.C. 105, 6 Envtl. L. Rep. 20,485)

> As noted by the Third Circuit:
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> In our view, the section 301(b) limitations represent a single number effluent limitation which prescribes the minimum amount of control (the "base level"), or conversely, the maximum amount of effluent discharge (a "ceiling") that is permissible. In determining this "base level," and concomitant pollutant ceiling, the Administrator is to consider the numerous differences in processes and capabilities of point sources. Having determined the "base level," and the "ceiling," he must then promulgate guidelines which are to guide the permit-issuing authorities in deciding whether, and by how much, the limitation to be applied to any individual point source is more stringent than the base level (in

terms of requiring more effective technology), and more stringent than the ceiling (in requiring a lower amount of effluent discharge).

American Iron and Steel Institute v. EPA, supra, 526 F.2d at 1045.